4. POWERS—*Donee of power also owning interest in property—Conveyance of the property—Presumption as to intent of grantor—Sub equent acts and conduct of donee of power.* Where a person who has a power of disposition over property and also owns an interest in it, executes an instrument by which he disposes of the property without expressly referring to the power, the instrument will be deemed to have been intended as a disposition of his interest, and not as an exercise of the power, if the transfer of his interest will satisfy the terms of the instrument; but if he has no interest in the property, or though he has an interest in it, yet if the instrument conveys a larger interest than he owns, then, inasmuch as the instrument would not take effect at all in the one case unless referred to the power, and would not be satisfied in the other by the transfer of his mere interest, it will be construed to be an execution of the power for the reason that it is necessary to satisfy the terms of the instrument and the apparent intention of the party. It is only where the words of the instrument may be satisfied without an intention to execute the power that it is not to be deemed an execution thereof. The subsequent acts and conduct of the donee of the power may also be looked to, for the purpose of showing that the donee regarded the instrument as an execution of the power conferred.

5. TRUSTS AND TRUSTEES—*Trustee also part owner of trust subject—Effect of failure to describe grantor as trustee—When presumed to have conveyed as trustee.* The fact that the grantor in a deed, who has a personal interest in the property conveyed and also holds an interest as trustee, is not described as trustee can have but little weight, when it appears that the *cestui que trust* also signed the deed, and that the deed could not have full effect according to the apparent intention of the parties, unless deemed to be an execution of the power conferred by the deed in which he was trustee. The deed, in such case, will be deemed to have been made in the capacity in which he had the power to make it, and in which effect can be given to it according to its purport.

RANGELEY'S ADM'R v. SOUTHERN RAILWAY CO.—Decided at Richmond, March 31, 1898. *Buchanan*, J. Absent, *Cardwell*, J:

1. RAILROADS—*Public Crossings—Gates—Duty of traveller.* A traveller approaching a railway crossing where gates or other devices are used for the purpose of warning travellers of approaching trains must use that degree of care which an ordinarily prudent person would use under like circumstances before going on the track. While the same degree of care is not required as at crossings where no such devices are used, still he must use his senses to ascertain whether or not a train is approaching. He cannot rely entirely on an open gate as a guaranty of safety.

2. RAILROADS—*Persons on track—Approaching train—Presumption—Liability of company.* A railroad company has the right to assume that a grown person seen on or near its track will get out of the way of an approaching train, and if he fails to do so and is injured, the company is not liable, unless it is shown that after the company could have discovered that he was not going to get off the track, it could have avoided the injury.

3. INSTRUCTIONS—*Assuming facts—When harmless error—Case at bar—Contributory negligence.* Although an instruction assumes as a fact a question which should

have been left to the jury, the verdict will not be set aside for that reason, when it appears that it was impossible for the objector to have been prejudiced thereby. In the case at bar, the evidence shows that the plaintiff was guilty of such contributory negligence as to deprive him of the right of recovery.

WASHINGTON, ALEXANDRIA & MT. VERNON ELECTRIC RAILWAY CO. v. QUALE.—Decided at Richmond, March 31, 1898. *Harrison*, J. Absent, *Cardwell*, J:

1. EVIDENCE—*Objections to questions—Competency of evidence—Form of questions.* An objection to a question on the ground that the evidence sought to be elicited is incompetent is properly overruled where the evidence is competent, though the question is leading. The objection should have been to the form of the question, so as to apprise opposing counsel of the necessity of asking a proper question.

2. RAILROADS—*Trespassers on cars—Wanton injury.* A railroad company is liable for the resulting injuries to an infant trespasser who is compelled by the servants of the company to jump from one of its trains while running at a high rate of speed. The law does not permit wanton or reckless injury to be inflicted even on a trespasser.

3. INSTRUCTIONS—*Construed as a whole—Defective instructions—How cured.* Instructions are to be construed as a whole. An incomplete statement of the law in one instruction may be cured by a complete statement of it in another, if when the two are read and considered together the court can see that the jury could not have been misled by the incomplete instruction.

4. CONTRIBUTORY NEGLIGENCE OF INFANTS—*Age and intelligence to be considered.* In considering how far an infant has been guilty of contributory negligence it is proper for the jury to consider the age, experience, and understanding of the infant.

5. INSTRUCTIONS—*City ordinance against fast running of cars on all streets—Instruction confined to scene of injury—Case at bar.* Although a city ordinance is general, and forbids the running of cars faster than six miles an hour on any of the streets, it is not error to instruct the jury that the ordinance forbids the defendant running its cars beyond the specified rate on the street on which the injury was inflicted which is the basis of the suit. In the case at bar the instructions, taken as a whole, fairly submitted to the jury the issues raised by the pleading, and substantially state the law applicable to the case so that the jury could not have been misled, nor the defendant prejudiced thereby.

HARRISON AND OTHERS v. WALTON'S EX'OR AND ANOTHER.—Decided at Richmond, March 31, 1898. *Buchanan*, J. Absent, *Cardwell*, J:

1. SUITS BY INFANTS—*Saving under sec. 3424 of Code.* An infant may assert his rights in a suit by his next friend whenever he sees fit to do so, although sec. 3424 of the Code allows him six months after becoming of age to show cause against a decree or order in certain cases.

2. RES JUDICATA—*Several suits touching same subject-matter.* Where the issues presented in a second suit were involved and determined in a prior suit, the judg-